

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Create a
Consistent Regulatory Framework for the
Guidance, Planning, and Evaluation of
Integrated Distributed Energy Resources.

Rulemaking 14-10-003
(Filed October 2, 2014)

**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON
PROPOSED DECISION ADDRESSING COMPETITIVE SOLICITATION AND
UTILITY REGULATORY INCENTIVE PILOT**

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I. INTRODUCTION

The Office of Ratepayer Advocates (ORA) respectfully submits these comments pursuant to the *Proposed Decision of Administrative Law Judge Hymes Addressing Competitive Solicitation and Utility Regulatory Incentive Pilot* (PD), issued on November 10, 2016. The PD adopts a pilot program (Incentive Pilot) for two purposes. One is to test a framework for the competitive solicitation of Distributed Energy Resources (DERs) that defer or avoid distribution capital expenditures. The other purpose is to test a regulatory incentive mechanism to encourage Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (jointly, the Utilities) to deploy DERs to cost-effectively defer or avoid distribution capital expenditures.

ORA supports the Competitive Solicitation Framework and Incentive Pilot and provides the following comments and recommendations to correct certain factual, legal and technical errors¹ identified in the PD:

- The PD should be modified to require Utilities to file a Tier 3 Advice Letter requesting approval of resulting contracts from its DER Request for Offer (RFO).
- The Commission should clarify that previously authorized distribution capital spending and DER deferral projects should be identified in the Tier 3 Advice Letter and accurately reflected in a Utility's General Rate Case (GRC) and Energy Resource Recovery Account (ERRA) applications.
- The Commission should clarify the scope, composition, extent of market participants' participation, and opportunities for the Distribution Planning Advisory Group (DPAG) to participate during the DER solicitation and selection process;
- Contents of the Utilities' Incentive Pilot evaluation report should be clarified to reflect the Competitive Solicitation Framework Working Group Final Report (CSFWG Final Report);

¹ Commission's Rules of Practice and Procedure, Rule 14.3(c).

- The Incentive Pilot evaluation process should be revised to be independently managed by Energy Division staff.
- The Contents of the report issued by the Independent Professional Engineer (IPE) should be clarified.
- Savings from Decreased Utility Spending on Distribution Infrastructure Should Benefit Ratepayers.

II. DISCUSSION

A. The Commission should require Utilities to file a Tier 3 Advice Letter requesting contract approval.

Diverting from standard practice and General Order (GO) 96-B, the PD requires Utilities to file a Tier 1 Advice Letter (AL) for contract approval.² A Tier 1 AL is only appropriate for ministerial actions where utilities exercise no discretion. A Tier 1 AL is not appropriate for DER contract approval for this deferral pilot because the least cost best fit methodology is an exercise of utility discretion, which an independent evaluator or independent engineer reviews using professional judgement, another highly discretionary action. Furthermore, a Tier 1 AL does not allow sufficient review of the results of the DER deferral solicitation or the content of these new contract types.

Given that this initial DER deferral solicitation will lay the foundation for the Commission's policy and framework for DER procurement in the future, ORA recommends that the Utilities file Tier 3 ALs for contract approval. A Tier 3 AL strikes the right balance between expediency and oversight, especially in the early stages of the incentive pilot and DER deployment for deferral purposes, by allowing parties to review the results of the pilot and raise questions that may require consideration by the Commission.

² PD, p. 46.

The Tier 3 AL should include a discussion of the following:

- a. The total value of the wires solution in relation to the DER distribution deferral value³ and the total locational net benefit of the DER;⁴
- b. Statement of the IPE verifying and approving the total DER distribution deferral project value;
- c. Discussion of how the total cost of the solicitation is reconciled with costs pre-authorized in the utility's GRC application;
- d. Discussion of whether any bids include gas-fired generation resources, including an affirmative showing that greenhouse gas emissions are expected to be reduced over the total life of the resource.⁵

Adopting ORA's recommended input for the Tier 3 AL allows the Commission to weigh in on undue ratepayer impacts related to cost or societal benefits resulting from the pilots in a streamlined manner.

In compliance with GO 96-B, Industry Rule 5.3(4), the PD should require Utilities to file a Tier 3 AL. The PD concludes that the resulting contracts should be approved by the Commission on a routine basis⁶ rather than allow stakeholders the opportunity to review the solicitation process results, bid selection, and contract approval. The PD justifies its conclusion by asserting that upfront preparation essentially negates the need for post-solicitation review.⁷ While ORA appreciates the Commission's presentation of

³ The DER distribution deferral value is the total value of the "non-wires alternative," which includes DER pre-commercial testing, project management, operations and maintenance (O&M) costs of maintaining the DER and other administrative costs are all additional costs IOUs incur due to DER deferral and must be weighed against the total costs of the DER deferral in order to fully evaluate the cost-effectiveness of the distribution deferral project. *See* CSFWG Final Report, Appendix 4, pp. 82.

⁴ *See* Competitive Solicitation Framework Working Group Final Report, Appendix 4, pp. 82-83.

⁵ While Public Utilities Code section 769 prohibited gas-fired generation DER from competing in distribution deferral procurements, the Commission's DRP guidance made an exception for gas-fired generation resources which reduced greenhouse gas emissions over the lifetime of the resource. CSFWG Final Report, Appendix 4, p. 83.

⁶ PD, p. 46.

⁷ PD, pp. 46-47.

a “cost-effectiveness cap for the solicited distributed energy resources” in the pre-solicitation Tier 3 AL filing⁸, the upfront standards in the pre-solicitation AL are currently insufficient to address all of the proposed elements of the Tier 3 AL requesting contract approval, enumerated above. Also, the preparation of solicitation materials and evaluation criteria does not shed light on whether evaluation processes were adhered to, whether Utilities exercised reasonable discretion in weighing and selecting bids under the least cost best fit framework, and whether ratepayers are subjected to reasonable costs, especially when external circumstances can force Utilities to change course.² That a Utility has followed its solicitation guidelines accordingly is insufficient assurance to pre-approve contracts. The Commission’s current process for approving procurement contracts recognizes that stakeholder involvement through procurement review groups (PRGs) is strictly advisory and non-binding. Thus, there is a need for formal stakeholder and Commission review following the bid evaluation and contract negotiation process.¹⁰

Furthermore, the PD’s conclusion that contracts should be approved only on a routine basis¹¹ is incongruent with the pilot nature of the Utilities’ first DER deferral solicitation. A ministerial review through a Tier 1 AL would not be reasonable if the Utilities request approval of several distribution deferral contracts in a single filing. A

⁸ PD, p. 54.

² The avoidable and immediate consequences that can result because of the effective date and minimal review associated with Tier 1 ALs is exemplified in Rulemaking (R.12-06-013) where the Commission directed Pacific Gas and Electric Company (PG&E) to file a Tier 1 AL to implement its rate change pursuant to D.15-07-001. Due to changes in PG&E’s revenue requirement, PG&E had to adapt its Commission-approved and stakeholder vetted glidepath. Because the resulting rate increase became effective prior to Energy Division’s suspension and later rejection of the AL, ratepayers incurred unreasonable costs for a period of time without an opportunity for stakeholders to investigate and validate the contents of PG&E’s Tier 1 AL. See Administrative Law Judge’s Ruling Directing PG&E to Show Cause Why the Commission Should Not Order Sanctions and Other Remedies in Response to PG&E Charging Rates Not Authorized By the Commission, filed in R.12-06-013 on March 9, 2016.

¹⁰ D.07-12-052, p. 119. “PRG recommendations are advisory and non-binding, and no participants in the PRG process give up any rights associated with future litigation of issues addressed in PRG meetings.” Note, the page numbering of the docketed document is flawed. This citation is to the *second* page numbered “119” (PDF page 130).

¹¹ PD, p. 46.

Tier 1 AL becomes effective pending disposition, i.e. effective on the date of filing, which allows a Utility to implement its request prior to Energy Division's grant or rejection of the AL.¹² Thus, stakeholders and the Commission do not have sufficient time to consider whether the results of the Utilities' solicitations are reasonable. The Tier 3 AL process provides greater transparency and the opportunity for discovery and review. This allows the Commission to better assess DER procurement and adjust its procurement policies accordingly. As DER procurement for deferral purposes mature, the Commission should reconsider whether a more expedited contract approval process, such as the utilization of the Tier 2 AL process, is warranted. Therefore, in compliance with GO 96-B and the nature of the Utilities' DER deferral project procurement, the PD should be modified to require Utilities to file a Tier 3 AL requesting contract approval.

B. Previously-authorized distribution capital spending and DER deferral projects should be identified in the Tier 3 Advice Letter and accurately reflected in a Utility's GRC and ERRA applications.

The PD states that, "[t]hrough the general rate case application process, a utility's past distribution capital spending will be reviewed to ensure that no duplication of recovery of the deferred traditional distribution investment is authorized for inclusion in recorded rate base."¹³ The PD lacks specific factual information. While the PD states that past distribution capital spending will be reviewed, it is silent as to how.

To fulfill this intent and facilitate review, ORA recommends that if a utility's pilot targets a previously-authorized distribution capital improvement, then the utility's Tier 3 AL for DER solicitation authorization should cite to the specific project that was previously authorized. Similarly, in instances where installed DERs unsuccessfully relieve the need for a distribution grid upgrade, ORA recommends that the PD should be

¹² GO 96-B, General Rule 3.6 and Industry Rule 5.1.

¹³ PD, p. 53.

modified to require utilities to flag requests for distribution capital projects to ensure accurate accounting of incentive, contract, and administrative costs in respective ERRA and GRC applications. Requiring this level of reporting in utilities' Tier 3 ALs, ERRA and GRC applications fulfills the intent of the PD to avoid duplicate recovery and facilitates line-item review. This is particularly necessary in the early stages of DER procurement for deferral projects and the Commission's incentive pilot.

C. The Commission should clarify the scope, composition, extent of market participants' participation, and opportunities for the DPAG to participate during the DER solicitation and selection process.

The PD requires the Utilities to establish a single DPAG to advise the Utilities on distribution planning activities,¹⁴ to work with the Utilities to identify distribution deferral projects,¹⁵ to determine how many and which projects to pursue,¹⁶ to work with the Utilities to select applicable valuation components for determining the potential cost-effectiveness of distribution deferral projects,¹⁷ to develop a contingency plan for the purposes of the pilot,¹⁸ and to provide input to the utilities on the utilities' evaluation of the solicitation process. The valuation methodology may be modified if the DPAG achieves consensus on additional valuation components and valuation methodologies.¹⁹ The DPAG is to include market participants, and to exclude discussions regarding potential avoided distribution costs.²⁰ Here, too, the PD lacks factual clarity. The final decision needs to clarify the scope and composition of the DPAG.

¹⁴ PD, p. 68, Ordering Paragraph 8.

¹⁵ PD, p. 68, Ordering Paragraph 9.

¹⁶ PD, p. 48.

¹⁷ PD, p. 69, Ordering Paragraph 9.

¹⁸ PD, p. 56, Findings of Fact 5.

¹⁹ PD, p. 66, Ordering Paragraph 4.

²⁰ PD, p. 25.

Because market participants will be participating in the DPAG, limiting participation in the DPAG to a small number of market participants could be problematic because such a process may put potential market participants who were not invited to participate at a competitive disadvantage. If market participation is desired, the PD should clarify that the DPAG should be open to all who are interested in attending.

The Commission should require the utilities to identify a subgroup of non-market participant DPAG members to advise the Utilities on the potential distribution costs that may be avoided by DERs and to observe the Utilities' bid evaluation process. Membership to this subgroup would be determined jointly by the utilities with input from Energy Division within two months of the Decision.²¹

The scope of the full DPAG should be expanded to explicitly include working with the utilities to complete the second part of the Incentive Pilot evaluation process.

D. The Contents of the Utilities' pilot evaluation report should be clarified.

The PD adopts a two part evaluation of the pilot to be performed by the Utilities.²² The first part will focus on the solicitation process, to be completed no later than 90 days after the filing of the Tier 1 AL seeking contract approval.²³ The second part will focus on the performance of the DERs, to be completed one year after approved projects are implemented.²⁴ The PD contains a technical error in Ordering Paragraph 15. (*See* ORA's recommended changes to Ordering Paragraph 15 in Appendix A.)

²¹ A similar subgroup of members without financial interest was adopted by the Commission for the Long Term Procurement Planning Proceeding in D.02-08-071, p. 25, and for planning the expanded Energy Efficiency portfolio in D.05-01-055, p. 103.

²² PD, p. 47.

²³ PD, p. 47.

²⁴ PD, p. 47.

In addition, the *second part* of the evaluation should include an update of the *first part* of the evaluation, in the event that new information is available or conditions change. Specifically, the *second part* of the evaluation, in addition to evaluating the performance of DERs should also provide an assessment of whether DERs procured are still expected to defer or avoid a distribution capital expenditure for each year in which a utility expects to claim an incentive.

If the Commission adopts ORA's recommendation to require Tier 3 AL filings for approval of procurement contracts, the Commission should concurrently modify Step Seven of the Pilot Evaluation Process to require the *first part* of the evaluation process to be completed no later than 90 days after procurement contracts are executed. As written, the PD would require the first part of the two-part Pilot Evaluation to be completed no later than 90 days after the *filing* of the Tier 1 AL.

E. The Incentive Pilot evaluation process should be revised to be independently managed by Energy Division staff.

The PD rejects ORA's proposal to have a third-party consultant, under the oversight of Energy Division, evaluate the Incentive Pilot.²⁵ The PD relies on the Utilities' statement that the Commission has historically required the Utilities to pursue pilot and demonstration projects and then to conduct self-evaluations of those projects.²⁶ This is a factual error, as this deviates from the Commission's history of delegating research initiatives, such as program evaluations, to staff when the Utilities may have a conflict of interest.²⁷

Furthermore, the PD adopts a process to ensure that the IPE is free from conflicts of interest by requiring Energy Division to select the Engineer. The Incentive Pilot evaluations should be aligned with Commission's past practices. The Incentive Pilot

²⁵ PD, p.48.

²⁶ Joint Utilities Reply Comments to the Ruling, September 22, 2016 at 12.

²⁷ See D.05-01-055 for example.

represents the first phase of what could ultimately be a significant transformation in the way electricity delivery is managed. The evaluations of the Incentive Pilot should be a reliable and objective source of information upon which the Commission can base a decision to scale the Incentive Pilot to full implementation. It would therefore be practical and reasonable for the Commission to take every measure to ensure that the evaluations are conducted without conflict, by specifically requiring Energy Division to maintain oversight of the evaluations.

F. The Contents of the report issued by the IPE should be clarified.

The PD requires the Utilities to hire an IPE to review and evaluate distribution plans for the purpose of the pilot,²⁸ and to advise the Utilities and DPAG on which and how many projects to pursue.²⁹ The PD contains a factual error as it fails to explain the specifics duties of the IPE and the content of the IPE's written reports.

Specifically, consistent with the CSFWG Final Report, the IPE should, for the purpose of the Incentive Pilot, assist the DPAG in developing bid evaluation methodologies;³⁰ prepare reports on DER deferral processes, from distribution deferral need determination to evaluation of DER projects;³¹ and, evaluate the Utilities' methodologies for the DER deferral project evaluation and selection.³² Reports prepared by the IPE should indicate, to the extent applicable, how and where the DER deferral process relates to the Utilities' electric distribution capacity planning process.³³

²⁸ PD, p.40. Ordering Paragraph 8, p. 68.

²⁹ PD, p. 41.

³⁰ CSFWG Final Report, p. 83.

³¹ CSFWG Final Report, p. 35.

³² CSFWG Final Report, p. 36.

³³ CSFWG Final Report, p. 36.

G. Savings from Decreased Utility Spending on Distribution Infrastructure Should Benefit Ratepayers.

The PD states that “a utility will be able retain any savings from deploying less costly distributed energy resources in lieu of the previously authorized distribution projects(s).”³⁴ This amount is in addition to the incentive Utilities are authorized to receive for the Distributed Energy Resources contracts, intended to make Utilities whole.³⁵ The PD contains legal error in this instance.

ORA recommends that savings are returned to ratepayers to offset the burden of increased spending on grid modernization investments. Granting Utilities additional profits when they are already neutral to DER acquisition is against the principles of cost-of service ratemaking and violates one of “the principle objectives of Assembly Bill 327 and [the Distribution Resources Proceeding to] ‘to minimize overall system costs and maximize ratepayer benefit from investments in distributed resources.’”³⁶

III. CONCLUSION

ORA respectfully requests the Commission correct these factual, legal, and technical errors and adopt ORA’s recommendations as stated herein.

Respectfully submitted,

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³⁴ PD, p. 54.

³⁵ PD, p. 49.

³⁶ ACR on Track 3 Issues, p. 9.

APPENDIX A

ORA's Proposed Changes To Conclusions Of Law And Ordering Paragraphs Of The Proposed Decision

Conclusions of Law

13. The Commission should approve the contracts for the Incentive Mechanism pilot(s) through the Tier ~~One~~ Three Advice Letter process.

Ordering Paragraphs

XX. Within 60 days following the issuance of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (jointly, the Utilities) shall implement Step One of the Utility Regulatory Incentive Mechanism Pilot (Incentive Pilot), by nominating a subgroup of Distribution Planning Advisory Group members who have no financial interest in the competitive solicitation to advise the utilities on the potential distribution costs that may be avoided by DERs and to observe the Utilities' bid evaluation process. The Utilities shall work with Commission staff to select members of the DPAG subgroup.

13. Within five months following the determination of the proposed resolution in Ordering Paragraph 10, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall complete Step Six of the Utility Regulatory Incentive Mechanism Pilot, by each filing a Tier Three ~~One~~ Advice Letter requesting Commission approval of the contract(s) to procure for projects identified in Ordering Paragraph 9 above.

XX. The Tier 3 Advice Letter should include a discussion of the following:

- a. The total value of the wires solution in relation to the DER distribution deferral value and the total locational net benefit of the DER;
- b. Statement of the IPE verifying and approving the total DER distribution deferral project value;
- c. Discussion of how the total cost of the solicitation is reconciled with costs pre-authorized in the utility's GRC application; and,
- d. Discussion of whether any bids include gas-fired generation resources, including an affirmative showing that greenhouse gas emissions are expected to be reduced over the total life of the resource

14. No later than 90 days after procurement contracts are executed following the filing of the Tier One Advice Letter in per Ordering Paragraph 13, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (jointly, the Utilities) Energy Division staff shall complete Step Seven of the Utility Regulatory Incentive Mechanism Pilot (Incentive Pilot), by filing the first of the two-part Incentive Pilot evaluation. With input from the Utilities and the Distribution Planning Advisory Group (Distribution Planning Advisory Group), the first part of the evaluation shall thoroughly respond to the following questions:

- Was the solicitation successful in procuring distributed energy resources (distributed energy resources) to meet the identified need?
- How did the earnings opportunity provided in this pilot affect utility sourcing of distributed energy resources to defer or displace distribution infrastructure? For the project required to mirror Demonstration “C” in Rulemaking 14-08-013 (if applicable), was there any measurable difference relative to utility sourcing for Demonstration “C”?
- Describe the impact on the Incentive Pilot of the Distribution Planning Advisory Group review of utility project identification?
- Did the competitive solicitation framework process perform effectively?
- What changes to the Incentive Pilot would have made it more effective?
- How would different incentive structures allocate the costs and benefits of the projects differently than the incentive employed in the Incentive Pilot? Include a financial analysis of the impacts on the utilities, customers, and vendors from the three incentive mechanisms using data from the projects completed: i) the percent of investment incentive as proposed, ii) the percent of investment incentive applied to the counterfactual conventional investment, and iii) shared savings.

15. No later than 90 days after procurement contracts are executed following the filing of the Tier One Advice Letter in per Ordering Paragraph 13, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (jointly, the Utilities) Energy Division staff shall complete Step Seven of the Utility Regulatory Incentive Mechanism Pilot (Incentive Pilot), by filing the first second part of the two-part Incentive Pilot evaluation. With input from the utilities and the DPAG, the second part of the evaluation shall investigate the following issues:

- Are there any updates of the first part of the evaluation?
- Evaluate the performance of DERs solicited through the pilot.

- Provide an assessment of whether DERs procured are deferring or avoiding a distribution capital expenditure for each year in which a utility expects to claim an incentive.